

**United States Department of Labor
Employees' Compensation Appeals Board**

D.R., Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF LAND MANAGEMENT, Medford, OR,
Employer**

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**Docket No. 16-0211
Issued: March 17, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2015 appellant filed a timely appeal from an October 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a schedule award.

FACTUAL HISTORY

On August 27, 2013 appellant, then a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2013 she injured her left index finger in the performance of duty. She alleged that she extended her finger to stop her vehicle door from

¹ 5 U.S.C. § 8101 *et seq.*

striking a nearby vehicle, and felt a tearing in her finger. The claim form does not indicate that appellant stopped working.

Appellant received treatment from Dr. Paul Matz, a Board-certified family practitioner. In an August 29, 2013 report, Dr. Matz provided a history of injury and diagnosed left hand joint pain. He provided a March 3, 2014 report indicating that appellant had injured her left index finger with some paresthesias about the metacarpophalangeal (MP) joint. Dr. Matz reported no limits in range of motion or function and diagnosed a strain of muscle or tendon of the hand.

On April 1, 2014 OWCP accepted the claim for a left index MP joint sprain. Appellant continued to receive treatment from Dr. Matz. In a report dated May 7, 2014, Dr. Matz noted that appellant reported a worsening of her fine manipulation in her left index finger.

Appellant was seen by Dr. Zakir Ali, a Board-certified neurologist, on July 25, 2014. In a report of that date, Dr. Ali provided a history of injury and results on examination. He reported that there was no evidence of sensory or motor compromise, with localized tenderness at the base of the index finger.

In a report dated September 5, 2014, Dr. Matthew Bengard, a Board-certified orthopedic surgeon, reported that appellant continued to have left index finger symptoms. He provided results on examination and indicated that an October 31, 2013 magnetic resonance imaging (MRI) scan had shown a partial ulnar collateral ligament tear off the metacarpal head. Dr. Bengard diagnosed left index ulnar collateral ligament injury with chronic synovitis, and recommended appellant wear a protective splint.

Appellant submitted a report dated January 31, 2015 from Dr. Matz, indicating that she was seen to discuss “claim closure” and reported that she continued to have shooting pain in her right finger and hand. Dr. Matz reported that her condition should be considered permanent and stationary.

On May 26, 2015 appellant filed a Form CA-7 claim for a schedule award. By letter dated June 19, 2015, OWCP requested that she submit a report from a physician as to a permanent impairment under the sixth edition of the American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The letter indicated that the report should include the date of maximum medical improvement (MMI), a description of any restriction of motion, other objective findings, subjective complaints, and an opinion as to the degree of permanent impairment under the A.M.A., *Guides* with an explanation as to how the A.M.A., *Guides* were applied. No response was received.

By decision dated July 21, 2015, OWCP denied the claim for a schedule award. It found that the medical evidence of record did not establish an employment-related permanent impairment. No additional evidence was received by OWCP.

Appellant requested reconsideration on July 31, 2015. She indicated that she had seen her physician and he would be submitting a report. On August 3, 2015 OWCP received a July 25, 2015 report from Dr. Matz, who reported that appellant was seen to discuss closing her workers’ compensation claim. Dr. Matz reported that she continued to have pain with typing that worsened as the day progressed. He briefly reported results on examination, noting for

motor strength 4/5 pinch strength for left thumb/index fingers. Dr. Matz wrote, “20 percent loss of function.” He also submitted handwritten responses to the June 19, 2015 developmental letter. Dr. Matz indicated that appellant reached MMI on July 27, 2015. He further indicated that there was 4/5 pinch strength of left thumb/index fingers, with occasional shooting pains, and pain with excessive use. Dr. Matz again asserted that there was a 20 percent loss of function.

By decision dated October 1, 2015, OWCP noted that it had reviewed the merits of the claim and denied modification. It found that the medical evidence did not contain a narrative report showing a permanent impairment to the left index finger and how it was calculated under the A.M.A., *Guides*.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

An employee seeking compensation for a permanent impairment under FECA has the burden to establish the essential elements of the claim, including that an employment injury contributed to a permanent impairment of a scheduled member or function of the body.⁵ The medical evidence necessary to support a schedule award includes a physician’s detailed report that provides a sufficient description of the impairment.⁶ Pursuant to OWCP procedures, a medical report should show that the individual has reached MMI, describes the impairment in sufficient detail for the evaluator to visualize the character and degree of disability, and gives a percentage of impairment.⁷ In addition, the report should include a history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁵ See *A.B.*, Docket No. 12-1392 (issued January 24, 2013).

⁶ See *James E. Jenkins*, 39 ECAB 860 (1988).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(b) (February 2013).

findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated under the A.M.A., *Guides*.⁸

ANALYSIS

In the present case, appellant has claimed a schedule award based on her accepted left index finger injury on August 24, 2013. The accepted injury is a left index MP joint sprain. The Board has reviewed the limited medical evidence of record and finds that it is not sufficient to establish a permanent impairment or require further development.

Dr. Matz has briefly opined in his July 25, 2015 report, and in his handwritten response received on August 3, 2015, that appellant had 20 percent loss of function. The record does not contain a report with a complete history of clinical presentation, physical findings, functional history, clinical studies, or objective tests. Dr. Matz refers to 4/5 in pinch strength, without providing any explanation as to how any motor deficit was evaluated.⁹ Nor is there any explanation as to how a 20 percent “loss of function” was calculated. It is unclear whether this is referring to the hand, the left index finger, or how the percentage was determined.

The medical evidence of record does not provide a detailed description of a permanent impairment that would enable the evaluator to make any accurate determination as to whether appellant has an employment-related permanent impairment to a scheduled member under the A.M.A., *Guides*. An employee has the burden to establish that an employment injury contributed to a permanent impairment of a scheduled member or function of the body.¹⁰ In the present case, the evidence of record is insufficient to establish permanent impairment or require further development of the evidence.

On appeal, appellant asserts that her physician told her that OWCP had all of the documentation of the specialists she had seen, and there was nothing else he could do. She also indicates that she continues to have pain and weakness in her finger, but the issue in the case is a permanent impairment under the A.M.A., *Guides* causally related to the employment injury. There must be probative medical evidence, as discussed above, that provides a sufficiently detailed description of a permanent impairment such that the degree of permanent impairment under the A.M.A., *Guides* can properly be determined. The current evidence is of diminished probative value in this regard. Appellant may submit new and relevant evidence to OWCP and request a schedule award at any time.¹¹

⁸ *Id.*, Chapter 2.808.6. If the claimant does provide an appropriate report, the case is referred to an OWCP medical adviser. *Id.*

⁹ Under the A.M.A., *Guides*, motor deficits are based on muscle strength testing, with both upper extremities tested and compared. A.M.A., *Guides* 425.

¹⁰ See *A.B.*, Docket No. 12-1392 (issued January 24, 2013).

¹¹ A claim for an increased permanent impairment based on new evidence is not a request for reconsideration and is not subject to reconsideration request time limitations or to the clear evidence of error standard. *R.P.*, Docket No. 10-1123 (issued January 25, 2011).

The Board notes that appellant may request a schedule award or increased schedule award at any time based on evidence of new exposure or medical evidence showing progression on an employment-related condition resulting in permanent impairment or increased impairment.¹²

CONCLUSION

The Board finds that appellant has not established a permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2015 is affirmed.

Issued: March 17, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² *Paul R. Reedy*, 45 ECAB 488, 490 (1994); *A.A.*, 51 ECAB 115, 116 (1999).